SYLLABI/SYNOPSIS

THIRD DIVISION

[G.R. No. 126712. April 14, 1999]

LEONIDA C. QUINTO, *petitioner, vs.* PEOPLE OF THE PHILIPPINES, *respondent*.

D E C I S I O N

VITUG, *J.*:

Assailed in this Petition for Review on Certiorari under Rule 45 of the Rules of Court is the decision of the Court of Appeals, promulgated on 27 September 1996, in People of the Philippines *vs.* Leonida Quinto y Calayan, docketed CA-G.R. CR No. 16567, which has affirmed the decision of Branch 157 of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 157, Pasig City, finding Leonida Quinto y Calayan guilty beyond reasonable doubt of the crime of Estafa.

Leonida Quinto y Calayan, herein petitioner, was indicted for the crime of estafa under Article 315, paragraph 1(b), of the Revised Penal Code, in an information which read:

"That on or about the 23rd day of March 1977, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, received in trust from one Aurelia Cariaga the following pieces of jewelry, to wit:

One (1) set of marques with briliantitos
valued at .....₱17,500.00
One (1) solo ring (2 karats & 30 points)
valued at .....₱16,000.00
One (1) diamond ring (rosetas)
valued at .....₱ 2,500.00

with a total value of P36,000.00 for the purpose of selling the same on commission basis and with the express obligation on the part of the accused to turn over the proceeds of sale thereof, or to return the said jewelries (sic), if not sold, five (5) days after receipt thereof, but the accused once in possession of the jewelries (sic), far from complying with her obligation, with intent of gain, gave abuse of confidence and to defraud said Aurelia Cariaga, did then and there wilfully, unlawfully and feloniously misappropriate, misapply and convert to her own personal use and benefit the said jewelries (sic) and/or the proceeds of sale or to return the pieces of jewelry, to the damage and prejudice of the said Aurelia Cariaga in the aforementioned amount of P 36,000.00.

"Contrary to law "[1]

Upon her arraignment on 28 March 1978, petitioner Quinto pleaded not guilty; trial on the merits thereupon ensued.

According to the prosecution, on or about 23 March 1977, Leonida went to see Aurelia Cariaga (private complainant) at the latter's residence in Makati. Leonida asked Aurelia to allow her have some pieces of jewelry that she could show to prospective buyers. Aurelia acceded and handed over to Leonida one (1) set of marques with *briliantitos* worth P17,500.00, one (1) solo ring of 2.30 karats

worth P16,000.00 and one (1) *rosetas* ring worth P2,500.00. Leonida signed a receipt (Exhibit "A") therefor, thus:

"RECEIPT

Pinatutunayan ko na tinanggap ko kay Gng. Aurelia B. Cariaga (ang) mga alahas na nakatala sa ibaba, upang aking ipagbili sa pamamagitan ng BIGAY PALA o Commission at Kaliwaan lamang. Ako'y hindi pinahihintulutan (na) ipagbili ang mga ito ng Pautang. Pinananagutan ko na ang mga alahas na ito ay hindi ko ipagkakaloob o ipagkakatiwala sa kanino pa man upang ilagak o maipagbili nila, at ang mga ito ay ako ang magbibili sa ilalim ng aking pangangasiwa at pananagutan sa halagang nakatala sa ibaba. At aking isasauli ang mga hindi na maipagbili sa loob ng 5 days (sic) araw mula sa petsa nito o sa kahilingan, na nasa mabuti at malinis na kalagayan katulad ng tanggapin ko sa petsang ito.

MGA URI NG ALAHAS

1 set marques with titos 17,500.
1 solo 2 karats & 30 points 16,000.
1 ring Rosetas brill 2,500.

Makati, March 23, 1977
(Sgd.)"[2]

When the 5-day period given to her had lapsed, Leonida requested for and was granted additional time within which to vend the items. Leonida failed to conclude any sale and, about six (6) months later, Aurelia asked that the pieces of jewelry be returned. She sent to Leonida a demand letter which the latter ignored. The inexplicable delay of Leonida in returning the items spurred the filing of the case for estafa against her.

The defense proffered differently. In its version, the defense sought to prove that Leonida was engaged in the purchase and sale of jewelry. She was used to buying pieces of jewelry from a certain Mrs. Antonia Ilagan who later introduced her (Leonida) to Aurelia. Sometime in 1975, the two, Aurelia and Leonida, started to transact business in pieces of jewelry among which included a solo ring worth P40,000.00 which was sold to Mrs. Camacho who paid P20,000.00 in check and the balance of P20,000.00 in installments later paid directly to Aurelia. The last transaction Leonida had-with Mrs. Camacho involved a "marques" worth P16,000.00 and a ring valued at P4,000.00. Mrs. Camacho was not able to pay the due amount in full and left a balance of ₱13,000.00. Leonida brought Mrs. Camacho to Aurelia who agreed to allow Mrs. Camacho to pay the balance in installments. Leonida was also able to sell for Aurelia a 2-karat diamond ring worth ₱17,000.00 to Mrs. Concordia Ramos who, unfortunately, was unable to pay the whole amount. Leonida brought Mrs. Ramos to Aurelia and they talked about the terms of payment. As first payment, Mrs. Ramos gave Leonida a ring valued at P3,000.00. The next payment made by her was P5,000.00. Leonida herself then paid ₱2,000.00.

The RTC, in its 25th January 1993 decision, found Leonida guilty beyond reasonable doubt of the crime of estafa and sentenced her to suffer the penalty of imprisonment of seven (7) years and one (1) day of *prision mayor* as minimum to nine (9) years of *prision mayor* as maximum and to indemnify private complainant in the amount of ₱36,000.00.

Leonida interposed an appeal to the Court of Appeals which affirmed, in its 27th September 1996 decision, the RTC's assailed judgment.

The instant petition before this Court would have it that the agreement between petitioner and private complainant was effectively novated when the latter consented to receive payment on installments directly from Mrs. Camacho and Mrs. Ramos.

The petition is bereft of merit.

Novation, in its broad concept, may either be **extinctive** or **modificatory**. It is extinctive when an old obligation is terminated by the creation of a new obligation that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent it remains compatible with the amendatory agreement. An extinctive novation results either by changing the object or principal conditions (objective or real), or by substituting the person of the debtor or subrogating a third person in the rights of the creditor (subjective or personal).[3] Under this mode, novation would have dual functions - one to extinguish an existing obligation, the other to substitute a new one in its place[4] - requiring a conflux of four essential requisites: (1) a previous valid obligation; (2) an agreement of all parties concerned to a new contract; (3) the extinguishment of the old obligation; and (4) the birth of a valid new obligation.[5]

Novation is never presumed,[6] and the *animus novandi,* whether totally or partially, must appear by express agreement of the parties, or by their acts that are too clear and unequivocal to be mistaken.[7]

The extinguishment of the old obligation by the new one is a necessary element of novation which may be effected either expressly or impliedly.[8] The term "expressly" means that the contracting parties incontrovertibly disclose that their object in executing the new contract is to extinguish the old one.[9] Upon the other hand, no specific form is required for an implied novation,[10] and all that is prescribed by law would be an incompatibility between the two contracts. While there is really no hard and fast rule to determine what might constitute to be a sufficient change that can bring about novation, the touchstone for contrariety, however, would be an irreconcilable incompatibility between the old and the new obligations.[11]

There are two ways which could indicate, in fine, the presence of novation and thereby produce the effect of extinguishing an obligation by another which substitutes the same. The *first* is when novation has been explicitly stated and declared in unequivocal terms. The *second* is when the old and the new obligations are incompatible on every point. The test of incompatibility is whether or not the two obligations can stand together, each one having its independent existence. If they cannot, they are incompatible and the latter obligation novates the first.[12] Corollarily, changes that breed incompatibility must be essential in nature and not merely accidental. The incompatibility must take place in any of the essential elements of the obligation, such as its object, cause or principal conditions thereof; otherwise, the change would be merely modificatory in nature and insufficient to extinguish the original obligation.

The changes alluded to by petitioner consists only in the manner of payment. There was really no substitution of debtors since private complainant merely acquiesced to the payment but did not give her consent[13] to enter into a new contract. The appellate court observed:

"Appellant, however, insists that their agreement was novated when complainant agreed to be paid directly by the buyers and on installment basis. She adds that her liability is merely civil in nature.

"We are unimpressed.

"It is to remembered that one of the buyers, Concordia Ramos, was not presented to testify on the alleged aforesaid manner of payment.

"The acceptance by complainant of partial payment tendered by the buyer, Leonor Camacho, does not evince the intention of the complainant to have their agreement novated. It was simply necessitated by the fact that, at that time, Camacho had substantial accounts payable to complainant, and because of the fact that appellant made herself scarce to complainant. (TSN, April 15, 1981, 31-32) Thus, to obviate the situation where complainant would end up with nothing, she was forced to receive the tender of Camacho. Moreover, it is to be noted that the aforesaid payment was for the

purchase, not of the jewelry subject of this case, but of some other jewelry subject of a previous transaction. (Ibid. June 8, 1981, 10-11)"[14]

There are two forms of novation by substituting the person of the debtor, depending on whose initiative it comes from, to wit: *expromision* and *delegacion.* In the former, the initiative for the change does not come from the debtor and may even be made without his knowledge. Since a third person would substitute for the original debtor and assume the obligation, his consent and that of the creditor would be required. In the latter, the debtor offers, and the creditor accepts, a third person who consents to the substitution and assumes the obligation, thereby releasing the original debtor from the obligation, here, the intervention and the consent of all parties thereto would perforce be necessary.[15] In either of these two modes of substitution, the consent of the creditor, such as can be seen, is an indispensable requirement.[16]

It is thus easy to see why Cariaga's acceptance of Ramos and Camacho's payment on installment basis cannot be construed as a case of either *expromision or delegacion* sufficient to justify the attendance of extinctive novation. Not too uncommon is when a stranger to a contract agrees to assume an obligation; and while this may have the effect of adding to the number of persons liable, it does not necessarily imply the extinguishment of the liability of the first debtor.[17] Neither would the fact alone **that the creditor receives guaranty or accepts payments from a third person who has agreed to assume the obligation, constitute an extinctive novation absent an agreement that the first debtor shall be released from responsibility.**[18]

Petitioner's reliance on Candida Mariano *vs*. People[19] is misplaced. The factual milieu in *Mariano* would indicate a clear intention on the part of the parties to release the accused from her responsibility as an agent and for her to instead assume the obligation of a guarantor. Unfortunately for petitioner in the case at bar, the factual findings of both the trial court and the appellate court prove just the opposite which is that there has never been any *animus novandi* between or among the parties.

Article 315 of the Revised Penal Code defines estafa and penalizes any person who shall defraud another by "misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property." It is axiomatic that the gravamen of the offense is the appropriation or conversion of money or property received to the prejudice of the owner. The terms "convert" and "misappropriate" have been held to connote "an act of using or disposing of another's property as if it were one's own or devoting it to a purpose or use different from that agreed upon." The phrase, 'to misappropriate to one's own use" has been said to include "not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right."[20] Verily, the sale of the pieces of jewelry on installments in contravention of the explicit terms of the authority granted to her in Exhibit "A" (supra) is deemed to be one of conversion. Thus, neither the theory of "delay in the fulfillment of commission" nor that of novation posed by petitioner, can avoid the incipient criminal liability. In *People vs. Nery*,[21] this Court held:

"It may be observed in this regard that novation is not one of the means recognized by the Penal Code whereby criminal liability can be extinguished; hence, the role of novation may only be either to prevent the rise of criminal liability or to cast doubt on the true nature of the original basic transaction, whether or not it was such that its breach would not give rise to penal responsibility ..."

The criminal liability for estafa already committed is then not affected by the subsequent novation of contract, for it is a public offense which must be prosecuted and punished by the State in its own conation.[22]

Finally, this Court fails to see any reversible error, let alone any grave abuse of discretion, in the appreciation of the evidence by the Court of Appeals which, in fact, hews with those of the trial court. Indeed, under the circumstances, this Court must be deemed bound by the factual findings of those courts.

Article 315, 1st paragraph, of the Revised Penal Code, as amended by Presidential Decree No. 818, provides that the penalty of *"prision correccional* in its maximum period to *prison mayor* in its minimum period, if the amount of the fraud is over 12,000 but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such case, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor or reclusion temporal,* as the case may be."

In the leading case of *People vs. Gabres*[23] this Court ruled:

"Under the Indeterminate Sentence Law, the maximum term of the penalty shall be 'that which, in view of the attending circumstances, could be properly imposed' under the Revised Penal Code, and the minimum shall be 'within the range of the penalty next lower to that prescribed' for the offense. The penalty next lower should be based on the penalty prescribed by the Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and it can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.

"The fact that the amounts involved in the instant case exceed ₱22,000.00 should not be considered in the initial determination of the indeterminate penalty; instead, the matter should be so taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence. This interpretation of the law accords with the rule that penal laws should be construed in favor of the accused. Since the penalty prescribed by law for the estafa charge against accused-appellant is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* minimum to medium. Thus, the minimum term of the indeterminate sentence should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months while the maximum term of the indeterminate sentence should at least be six (6) years and one (1) day because the amounts involved exceeded ₱22,000.00, plus an additional one (1) year for each additional P10,000.00."[24]

The penalty imposed by the trial court, affirmed by the appellate court, should accordingly be modified.

WHEREFORE, the assailed decision of the Court of Appeals is AFFIRMED except that the imprisonment term is MODIFIED by now sentencing petitioner to an indeterminate penalty of from two (2) years, eight (8) months and one (1) day of *prison correccional* to seven (7) years and one (1) day of *prision mayor.* The civil liability of appellant for ₱36,000.00 in favor of private complainant is maintained. Costs against petitioner.

SO ORDERED.

Romero, (Chairman), Panganiban, Purisima, and *Gonzaga-Reyes, JJ.,* concur.

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[1] *Rollo*, p. 35.

[2] *Rollo*, p. 47.

[3] 8 Manresa 428 cited in IV Tolentino, Commentaries and Jurisprudence, Civil Code of the Philippines, 1991 Edition, p. 381.

[4] Sandico, Sr., *vs*. Piguing, 42 SCRA 322; Bert Osmea & Associates *vs*. Court of Appeals, 120 SCRA 395.

[5] Reyes vs. Court of Appeals, 264 SCRA 35.

[6] Rillo vs. Court of Appeals, 274 SCRA 461.

[7] Fortune Motors (Phils.) Corp. vs. Court of Appeals, 267 SCRA 653.

[8] Uraca vs. Court of Appeals, 278 SCRA 702, cited in Tolentino, *idem*.

Art. 1292, New Civil Code. In order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms, or that the old and new obligations be on every point incompatible with each other.

[9] Philippine National Bank *vs*. Granada, (C.A.) G.R. No. 13919-R, July 20, 1955, cited in Tolentino, *supra*, p. 384.

[10] Tolentino, *supra*.

[11] Gaw vs. Intermediate Appellate Court, 220 SCRA 405, 417.

... "there is complete and substantial incompatibility between the two obligations." Sandico, Sr. *vs*. Piguing, *supra*, p. 334.

[12] Vda. de Mondragon vs. Intermediate Appellate Court, 184 SCRA 348; Caneda, Jr. vs. Court of Appeals, 181 SCRA 762.

[13] Art. 1293. New Civil Code. Novation which consist in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment made by the new debtor gives him the rights mentioned in articles 1236-1237.

[14] *Rollo*, p. 32.

[15] 8 Manresa 436-437, cited in Tolentino, p. 390.

[16] De Cortes *vs*. Venturanza, 79 SCRA 709; See also E. C. McCullough & Co. *vs*. Veloso and Serna, 46 Phil. 1; Cochingyan, Jr. *vs*. R & B Surety and Insurance Co., Inc., 151 SCRA 339; Government Service Insurance System *vs*. Court of appeals, 169 SCRA 244; Garcia *vs*. Khu Yek Chiong, 65 Phil. 466.

[17] Rios *vs*. Jacinto, etc., 49 Phil. 7, Garcia *vs*. Khu Yek Ching, 65 Phil. 466.

[18] La Campana Food Products, Inc., *vs*. Philippine Commercial and Industrial Bank, 142 SCRA 394, citing Dugo *vs*. Lapea, 6 SCRA 1007; See also Ajax Marketing and Development Corporation *vs*. Court of Appeals, 248 SCRA 223; Staight *vs*. Haskell, 49 Phil. 614; Pacific Commercial Co. *vs*. Sotto, 34 Phil 237; Estate of Mota *vs*. Serra, 47 Phil. 464.

[19] 216 SCRA 541.

[20] Lim vs. Court of Appeals, 271 SCRA 12, 21.

[21] 10 SCRA 244, 247, citing; Abeto *vs*. People, 90 Phil. 581; and U.S. *vs*. Villareal, 27 Phil. 481.

[22] Tan vs. Court of Appeals, 283 SCRA 18; see also People *vs*. Benitez, 108 Phil. 920.

[23] 267 SCRA 581.

[24] At pp. 595-596.